

## MEMORANDUM

DATE: June 18, 2007

TO: All Members of the Delaware State Senate  
and House of Representatives

FROM: Ms. Daniese McMullin-Powell  
Chairperson  
State Council for Persons with Disabilities

RE: H.B. 167 [Hospital & Long Term Care Facility Policies]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 167 which would require hospitals and licensed long-term care facilities to allow adult patients to receive visitors subject to certain restrictions; and require such facilities to honor powers of attorney, advance health care directives, and similar documents. SCPD strongly opposes the proposed legislation. The bill is problematic for several reasons, some of which are reflected in the attached April 18 letter from CLASI's poverty law program. As a supplement to that letter, SCPD has the following observations.

First, the "need" for a hospital visitation statute is tenuous. As the April 18 letter indicates, JCAHO standards require any hospital visitation restriction to be determined with the patient's participation, evaluated for therapeutic effectiveness, and justified through documentation in the medical record. DHSS is also authorized to issue regulations covering hospitals, undermining the need for a statutory standard. See Title 16 Del.C. §1007.

Second, in the context of mental hospitals [Title 16 Del.C. §§5001(4) and 5101(2)], the bill creates a conflict with the existing bill of rights and actually authorizes hospital visitation restrictions based on less justification. The bill of rights only allows visitation restrictions based on avoidance of "serious harassment of others" and "'treatment team limitation based on a clinical determination of serious patient harm". See Title 16 Del.C. §5161(b)(9). In contrast, the bill authorizes restrictions based on more "flimsy" justification, including a general reference to "patient's medical condition" and "visitation hours". Indeed, the bill would affirmatively empower hospitals to adopt restrictive visitation hours (e.g. 1-2 hours daily) since it lacks any requirement of reasonable visitation hours and simply authorizes restrictions based on a hospital's visitation hours.

Third, the bill is more restrictive than existing law in the context of visitation within long-term care facilities. As the April 18 letter indicates, the LTC bill of rights creates a broad visitation right which recites as follows: "Every patient and resident may associate and communicate privately and without restriction with persons and

groups of the patient's or resident's own choice (on the patient's or resident's own or their initiative) at any reasonable hour." Title 16 Del.C. §1121(11). The bill undercuts this liberal standard by affirmatively authorizing facilities to curb visitation based on amorphous "patient's medical condition" and truncated visitation hours. The bill could seriously limit visitation in long-term care facilities throughout the state, including nursing homes, assisted living residences, and group homes.

Fourth, as the April 18 letter indicates, the bill requires covered facilities to honor powers of attorney, advance health care directives, and similar documents in accordance with the advance health care decisions law (Title 16 Del.C. Ch. 25) and POA statute (Title 12 Del.C. Ch. 49). Existing law already requires compliance:

(d) Except as provided in subsections (e) and (f) of this section, a health-care provider or institution providing care to a patient shall:

(1) Comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health-care decisions for the patient; and

(2) In the absence of an individual instruction, comply with a health-care decision for the patient made by a person then authorized to make health-care decisions for the patient to the extent the agent or surrogate is permitted by this chapter.

Title 16 Del.C. §2508.

The only exception is based on the provider's written policy based on conscience. For example, St. Francis Hospital could decline an advance directive authorizing an abortion.

Therefore, at best, the bill "muddies the waters" by requiring facilities to honor directives when such a mandate is already in the Code. At worst, if the bill seeks to undermine the "conscience" exception, it is ill conceived.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: The Honorable Ruth Ann Minner  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council  
Mental Health Association  
National Alliance for the Mentally Ill – DE Chapter  
The Arc of Delaware  
ACLU  
AARP

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